

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MELVIN W. MERMELL

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Appeal No. 97-4205  
Application 08/562,853<sup>1</sup>

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ON BRIEF

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Before MEISTER, ABRAMS and CRAWFORD, Administrative Patent Judges.

MEISTER, Administrative Patent Judge.

**DECISION ON APPEAL**

Melvin W. Mermell (the appellant) appeals from the final rejection of claims 1-12, the only claims present in the application.<sup>2</sup>

WE REVERSE.

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<sup>1</sup> Application for patent filed November 27, 1995.

<sup>2</sup> Claims 1 and 12 have been amended subsequent to final rejection.

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The appellant's invention pertains to a firearm safety storage box. Independent claim 1 is further illustrative of the appealed subject matter and a copy thereof may be found in the appendix to the appellant's brief.

The prior art relied on by the examiner is:

Luisada	3,655,087	Apr. 11, 1972
Veenema	3,989,157	Nov. 2, 1976
Markovich	4,446,900	May 8, 1984
Sacks	5,149,203	Sep. 22, 1992

The answer states that the following rejections are applicable to the claims on appeal:<sup>3</sup>

Claims 1-7 and 10-12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Luisada in view of Veenema and Markovich.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Luisada in view of Veenema, Markovich and "Official Notice."

Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over Luisada in view of Veenema Markovich and Sacks.

The examiner's rejections are explained on pages 5-7 of the answer. The arguments of the appellant and examiner in support

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<sup>3</sup> In the final rejection claims 1-12 were also rejected under 35 U.S.C. § 112, second paragraph. In view of the lack of mention of this rejection in the answer, we presume that the examiner has withdrawn the final rejection of claims 1-12 on this ground. *See Ex parte Emm*, 118 USPQ 180 (Bd.App. 1957).

of their respective positions may be found on pages 4-10 of the brief, pages 1-3 of the reply brief and pages 8-12 of the answer.

### **OPINION**

We have carefully reviewed the appellant's invention as described in the specification, the appealed claims, the prior art applied by the examiner and the respective positions advanced by the appellant in the brief and reply brief and by the examiner in the answer. This review leads us to conclude that the prior art relied on by the examiner fails to establish the obviousness of the appealed subject matter within the meaning of 35 U.S.C. § 103. Accordingly, we will not sustain any of the above-noted rejections.

Initially, we note that the brief contains arguments concerning the propriety of the examiner's requirement for correction of the drawings. Under 35 U.S.C. § 134 and 37 CFR § 1.191, appeals to the Board of Patent Appeals and Interferences are taken from the decision of the primary examiner to reject claims. We exercise no general supervisory power over the examining corps and decisions of primary examiners to require corrections to the drawings are not subject to our review. **See Manual of Patent Examining Procedure** (MPEP) §§ 1002.02© and 1201

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(6th ed., Rev. 3, Jul. 1997); **cf. In re Mindick**, 371 F.2d 892, 894, 152 USPQ 566, 568 (CCPA 1967) and **In re Deters**, 515 F.2d 1152, 1156, 185 USPQ 644, 648 (CCPA 1975). Thus, the relief sought by the appellant would have properly been presented by a petition to the Commissioner under 37 CFR § 1.181.

Each of the above-noted rejections is bottomed on the examiner's view that:

It would have been obvious to one having ordinary skill in the art in view of Veenema and Markovich to modify the container of Luisada so the wall panels are permanently secured to the frame structure as taught by Veenema and also to include foam beddings within the container as taught by Markovich to safely secure the firearm and prevent the contents from sliding during handling.  
[Answer, page 6.]

The examiner also opines that:

Luisada clearly discloses the removable access panel (114) having a body (116), size and shape similar to the other panels (Figures 1 and 10; column 4, lines 13-17). Luisada also discloses a latch means (89, 92, 96, 98) affixed to the removable access panel for securing the container. It is submitted that once the other panels are affixed to the frame, they are affixed permanently until disassembled. It would have been obvious to one having ordinary skill in the art to eliminate latch means from the container of Luisada so the removable access panel is not

visually distinct from the other panels to prevent others from readily determining which side to open. The omission of an element and its function, for example to make something less expensive to manufacture would appear obvious to one working in this art. There does not appear to be anything unobvious about using the teaching of providing adhesive for permanently securing the other panels to the frame structure as taught by Veenema (column 2, lines 48-68) in the container of Luisada to provide a secure container and also prevent the others getting access to the container contents. [Answer, pages 8 and 9.]

Initially, as to the examiner's contention that the panels of Luisada can be considered to be "affixed permanently until disassembled," we observe that it is well settled that terms in a claim should be construed in a manner consistent with the specification and construed as those skilled in the art would construe them (**see *In re Bond***, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990), ***Specialty Composites v. Cabot Corp.***, 845 F.2d 981, 986, 6 USPQ2d 1601, 1604 (Fed. Cir. 1988) and ***In re Sneed***, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983)). Here, the examiner is attempting to expand the meaning to be given to the claimed "means for permanently securing" beyond all reason. Contrary to the examiner's position that Luisada's panels are permanently secured, Luisada expressly states that the

panels are **releasably** secured (see column 1, line 64). We can think of no circumstances under which the artisan, consistent with the appellant's specification, would construe Luisada's releasable connection to correspond to the claimed means for permanently securing.

Turning to the examiner's contention that it would have been obvious to permanently secure the panels of Luisada to the frame structure in view of the teachings of Veenema, we observe that the entire thrust of Luisada's invention is to provide a lightweight **knockdown** container wherein the various panels are **releasably** held in assembled position on a pallet or base (see column 1, lines 44-69). Thus, we do not believe that it would have been obvious to make such a modification since to do so would destroy the invention upon which Luisada was based, namely, providing a knockdown container with releasably secured panels. **See Ex parte Hartmann**, 186 USPQ 366, 367 (Bd.App. 1974).

Moreover, even if all the rather extensive modifications proposed by the examiner were made, the claimed invention would not result. That is, independent claim 1 does not simply require that the various panels not be visually distinct from one other as the examiner apparently believes. Instead, independent claim 1 expressly requires that the means for **removably securing** the

access panel not be visually distinct from the means for ***permanently securing*** the remaining panels. Turning to the teachings of Luisada, the removable access panel or top 114 is secured by three separate means, i.e., (1) the arrangement in Fig. 12 wherein the securement of the removable access panel 114 to the back panel 28 is illustrated, (2) the arrangement in Fig. 10 wherein the securement of the removable access panel 114 to a side panel 102 is illustrated and (3) the arrangement in Fig. 7 wherein the securement of the removable access panel 114 to the front panel 64 is illustrated. While the securing means illustrated in Fig. 12 is visually similar to the means for securing the back, side, front and bottom panels, the securing means illustrated in Figs. 10 and 7 are not. That is, as illustrated in Fig. 12 the securement means includes an angle member 120, 122 which is spaced from the back panel by a visually discernable gap or space. The means for securing the back, side, front and bottom panels together all similarly have a visually discernable gap or space. On the other hand, the securing means illustrated in Figs. 10 and 7 have no such visually discernable gap or space. Furthermore, (1) the securing means illustrated in Fig. 10 includes a downwardly extending plate 126 that extends a significant distance downwardly at a location near the back 28,

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which plate none of the other securing means has and (2) the securing means illustrated in Fig. 7 includes a plate 130 that appears to extend all the way along the front panel and projects downwardly past the juncture of the removable access panel 114 and the front panel 64. This being the case, the securing means illustrated in Figs. 7 and 10 are visually distinguishable from the remaining securing means. We have carefully reviewed the teachings of Veenema, Markovich and Sacks but find nothing therein which would overcome these deficiencies of Luisada.

In view of the foregoing, we will not sustain any of the above-noted rejections and the decision of the examiner is reversed.

***REVERSED***

JAMES M. MEISTER  
Administrative Patent Judge

NEAL E. ABRAMS  
Administrative Patent Judge

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MURRIEL E. CRAWFORD )  
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